Supreme Court, U.S.
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No. 87-95

In The

Supreme Court of the United States

October Term, 1987

GARY R. HAGEBUSH
ROY E. SCHWASINGER
Petitioners,

v.

FIRST NATIONAL BANK OF OMAHA,
A Nebraska Banking Corporation,
Respondent.

GARY R. HAGEBUSH
ROY E. SCHWASINGER
Petitioners,

v.

NEBRASKA STATE BAR ASSOCIATION,
KAY ORR, GOVERNOR,
Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF NEBRASKA

REPLY BRIEF OF PETITIONERS GARY R. HAGEBUSH — ROY E. SCHWASINGER

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QUESTIONS PRESENTED

1. Can Robert T. Grimit, as a Respondent as a member of the Nebraska State Bar Association, represent the Bar as counsel?

2. Could the Nebraska Supreme Court as members of the Nebraska State Bar Association dismiss an action against the Nebraska State Bar Association and Governor having been appointed by the Governor of the State, and does this create a conflict of interest and violate the Code of Professional Conduct?

3. Under Federal Question Jurisdiction, 28 USCS 1331, does the federal or state courts have jurisdiction over the Nebraska State Bar Association, a non-profit corporation, whose membership resides in states other than Nebraska but its principle place of business under 28 USCS 1332 is within the state?

4. Under 28 USCS 1331, who has jurisdiction, federal or state courts, over attorneys misrepresenting instrumentalities of the federal government i.e. national banks?

5. Under 28 USCS 1346 and 28 USCS 2680 Exceptions, is a Federal Tort Claim required to be presented before initiating a cause of action since both the United States District Court for the District of Nebraska and the United States Court of Appeals for the Eighth Circuit require it, and is it a violation of Rule 13 of the Federal Rules of Civil Procedure?

6. Are United States Attorneys Staff; United States District Court Staff; United States Court of Appeals

Staff; including national banks staff; F.D.I.C. Staff covered under 28 USCS 2671?

7. Are employees of state and federal agencies required to report misconduct known to them to be violations of law?

8. Who is responsible for false entires in court records, Clerk of Court, Court Administrative, Judge or attorneys?

9. Are persons who serve papers responsible for the errors in service and should have they investigated errors before service?

10. Are banks and courts covered under the Uniform Deceptive Trade Practices Act for misrepresenting the charter, extent, volume or nature of their business?

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REPLY BRIEF OF PETITIONERS GARY R. HAGEBUSH — ROY E. SCHWASINGER

Petitioners, Gary R. Hagebush and Roy E. Schwasinger, respectfully request this Court to grant the Petition for a Writ of Certiorari to review the Judgment of the Nebraska Supreme Court and the Opinion of the United States Court of Appeals for the Eighth Circuit.

OPINION BELOW

The relevant opinions of the Nebraska Supreme Court and the United States Court of Appeals for the Eighth Circuit appears in the appendix of the original document filed July 9 and docketed July 10 in this Court. See App. 1, 4 and 5.

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STATEMENT OF JURISDICTION

Jurisdiction of the Supreme Court is granted under United States Constitution Article III, Sections 1 and 2. Sections 1251 et seq. of Title 28.

Articles I and VI of the United States Constitution.

U. S. Sup. Ct. Rule 17 U.S.C.A.

National Bank Act.

Uniform Commercial Code.

Uniform Deceptive Trade Practice Act.

Federal Tort Claims Act.

Electronic Fund Transfer Act.

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CONSTITUTIONAL AND STATUTORY PROVISIONS

Article III of the United States Constitution establishes the Supreme Court and inferior courts and judicial department.

Article VI states Pledge of national and state officials to uphold a Constitution.

Nebraska Revised Statute Sec. 8-114 requires all banks to be incorporated to conduct business in the state.

Federal Tort Claims Act grants damages for misrepresentation.

The decisions of the United States Supreme Court are ultimate and paramount authority as to the powers and liabilities of National Banks (*Hansford v. National Bank of Tifton,* 73 S.E. 405, 10 Ga. App. 270 (1912)).

Citizens' Nat. Bank of Stamford v. Stevenson, Tex. Com. App., 231 S.W. 364 (1921).

National Bank Act.

STATEMENT OF THE CASE

Members of the Nebraska State Bar Association failed to comply with provisions of the National Bank Act, Federal Tort Claims Act, Uniform Commercial Code, Uniform Deceptive Trade Practices Act, Electronic Fund Transfer Act, and the Nebraska Bank Act. The Nebraska State Bar Association failed to investigate, prosecute or to take any disciplinary action against its members for failure to enforce state and federal laws concerning the transfer of funds, ownership of Canadian and American Patents, grant damages, produce documents alleged to have been in existence by its members, grant deductions for business expenses, including violations of their Oath and Rule 5 of

the Local Rules of the United States District Court for the District of Nebraska.

Members of the Association placed into both federal and state courts documents concerning the existence of a corporation which cannot be located in the state and granted it judgment.

The Nebraska State Bar Association is now opposing the granting of a Writ of Certiorari, placed into the Court by a member of the association who is a respondent in this action the same as they did in the Nebraska Supreme Court, and that court failed to determine if this could be done. See App. 1.

The United States Supreme Court has ultimate and paramount authority as to the powers and liabilities of national banks, and special and important reasons within Rule 17 of this Court relating to granting of certiorari and relating to problems reaching constitutional dimensions in this case exists.

Governor Kay Orr, through attorneys licensed by the state and members of the Nebraska State Bar Association, alleges that the Governor has no jurisdiction over the bank and that it is a national banking association, however, no proof has been placed into this Court proving the allegation, however, national banking associations are deemed citizens of states in which they reside, but did not place this allegation into the Lancaster County District Court, but did state that she demurred the Writ of Mandamus. Governor Kay Orr failed to enforce Nebraska Revised Statute Sec. 8-114, and by Oath as Governor alleged to do. The Nebraska Supreme Court as members of the Nebraska State Bar Association and as appointees by the Governor,

failed to enforce state law and failed to answer any question concerning the case, being members of the Nebraska State Bar Association as defendants in the case under Nebraska Revised Statute Sec. 26. Members of the Nebraska Supreme Court violated their Oath to enforce the laws of the state and the Constitution of the United States and should have been removed from office by the Nebraska State Bar Association.

Briefs in opposition of Respondents, the Nebraska State Bar Association and Kay Orr, Governor, should be denied for failure of Respondents to properly document their objections through allegations, and Writ should be granted.

———o———

SUMMARY OF THE ARGUMENT

The Respondent, Nebraska State Bar Association, has failed to provide Petitioners any documentation concerning First National Bank of Omaha, A Nebraska Banking Corporation as to the date of termination of Charter 209, state charter, registration, corporation papers, or any letters granting the Nebraska Department of Banking jurisdiction over the Bank as a state chartered bank. Federal and State Courts have made fraudulent entries in the records made by members of the Nebraska State Bar Association and all staffs of the courts should have investigated irregularities concerning misrepresentation involving misapplication of funds, ownership of United States Patents, fraudulent charges for services not done, failure to grant deductions of business expenses granted under the Internal Revenue Act, failure to produce records

alleged to have been in existence, and alleging by opposing the grant of this Writ of Certiorari that the case does not involve federal questions since the Nebraska Supreme Court would not rule on Motion for Determination if Appellees Counsel can represent Appellees before Court having been a defendant in the case. See App. 1.

I. The decisions of the United States Supreme Court are ultimate and paramount authority as to the powers and liabilities of national banks. Hansford v. National Bank of Tifton, 73 S.E. 405, 10 Ga. App. 270 (1912).

Contrary to the Brief in opposition of Respondent, Nebraska State Bar Association, Petitioners have presented a Federal Question in CV 85-0-96, CV 86-0-192 in the United States District Court, No. 85-1726 in the United States Court of Appeals for the Eighth Circuit, and in No. 831-565 in the Douglas County District Court, No. 86-1016 in the Nebraska Supreme Court, and on page 5 of Respondents Brief, Robert T. Grimit has misled this Court and is also a Respondent as a member of the Nebraska State Bar Association.

This Court is therefore the ultimate and paramount authority as to the liability of First National Bank of Omaha, and agents of said institution for misrepresentation found in the Federal Tort Claims Act.

II. Respondent failed to investigate allegations of misconduct, false entries into bank records, court records, income tax forms filed by members, failure to grant business deductions granted under the Internal Revenue Act regarding Co. and Corporation expenses.

Members of the Nebraska State Bar Association failed to order the production of records, grant business deduc-

tions, and have entered into the bank and court records fraudulent affidavits concerning the ownership, business, volume and misrepresentation of ownership of patents, a violation of the Uniform Commercial Code, use of due care; a violation of the National Bank Act, Uniform Deceptive Practice Act, and Electronic Fund Transfer Act.

III. A Motion for dismissal was placed before the Douglas County District Court and was overruled by Judge James Buckley, however counterclaim was granted. See App. 2.

Federal decisions are controlling in dealing with national bank. *Wray v. Citizens' Nat. Bank of Dublin,* Tex. Com. App. 1929, 288 S.W. 171; *Citizens' Nat. Bank of Stamford v. Stevenson,* Tex. Com. App. 1921, 231 S.W. 364.

Douglas County District Court cannot assume jurisdiction of a national bank, judgment should have been vacated and case moved to the United States District Court contrary to Judge James Buckley's decision to overrule motion to dismiss, and the Nebraska State Bar Association should be held accountable for the decisions of the United States District Court for the District of Nebraska and the opinions and judgments from the Douglas County District Court, including the Nebraska Supreme Court.

IV. Under Rule 17 of this Court, special and important reasons relating to problems regarding issues involved reach constitutional dimensions.

Rice v. Sioux City Memorial Park Cemetery, Iowa 1955, 75 S. Ct. 614, 349 U.S. 70, 99 L. Ed. 897 (1955)

Can a national bank obtain jurisdiction in a state court and obtain judgment through the use of fraudulent documents?

Respondent, Kay Orr, Governor, through counsel as members of the Nebraska State Bar Association, alleged to this Court that the Bank is now a National Banking Association, however producing no letters, affidavits or other evidence to this Court and has failed to produce any documents that the bank was not converted to a state chartered financial institution by the Comptroller of the Currency. All Attorneys and Judges were licensed by the State of Nebraska and as the Chief Executive Officer of the State should have taken action against bank for alleged misrepresentation, since the First National Bank of Omaha, A Nebraska Banking Corporation told the United States District Court, that it lacked jurisdiction, and has represented itself as a state chartered financial institution to citizens of Canada and Australia of which Water Conservation Systems Co. has conducted business and has been unable to deduct for tax purposes expenses incurred, both federal and state, and if this Bank was not a state chartered financial institution, why has the Attorney General of the State taken so long to admit misrepresentation by members of the Nebraska State Bar Association? The I.R.S. has harrassed owners of Water Conservation Systems Inc. in which no business could be conducted because of the problems in which the United States Attorney and his staff has taken no action to prosecute under 18 U.S.C.A. 656 and has allowed the First National Bank of Omaha to continue operating as a state chartered financial institution even after the information had been turned over to them through the F.B.I. and agents of the F.B.I. and the attorneys in the United States Attorneys Office including the Federal Judges are all members of the Nebraska State Bar Association. Governor Kay Orr, has

failed to enforce Nebraska Revised Statute Sec. 8-114, and by oath alleged to uphold the laws of the State of Nebraska and the Constitution of the United States and should be held accountable for her inability to enforce state laws including the Nebraska Bank Act. The Attorney General of the State should have requested her resignation and/or prosecuted her for misrepresentation.

Failure to grant Writ of Certiorari would determine that the Constitution of the United States has no legal implications to elected, appointed or selected persons as employees of federal agencies covered under the Federal Tort Claims Act, and that members of the courts can misrepresent to any court any case without penalty, and that national banks are not required to obey federal laws, and no court has jurisdiction over them, as the courts have alleged.

CONCLUSION

For each of the foregoing reasons, the Petition for a Writ of Certiorari should be granted.

Respectfully submitted,

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Petitioners

APPENDIX

IN THE SUPREME COURT OF NEBRASKA

WATER CONSERVATION SYSTEMS CO,	)	
	)	Case No. 87-337
Appellant,	)	
	)	MOTION FOR
v.	)	DETERMINATION IF
	)	APPELLES COUNSEL
NEBRASKA STATE BAR ASSOCIATION;	)	CAN REPRESENT
KAY ORR, GOVERNOR,	)	APPELLEES
	)	BEFORE COURT.
Appellees.	)	

COMES NOW the Appellant, Water Conservation Systems Co., and requests a determination by this Court if Appellees counsel can represent Appellees, by virtue of them being defendants in this case as members of the Nebraska State Bar Association.

The factual basis and legal authorities relied upon by appellant is Nebraska Revised Statute Sec. 7-102 and Sec. 7-106 including the Code of Professional Conduct.

WATER CONSERVATION SYSTEMS CO.
Appellant

/s/ Gary R. Hagebush

By: /s/ Roy E. Schwasinger
6904 Oak Plaza
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Telephone: (402) 393-7232

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing motion has been served upon the attorneys of record by mailing said copy to Robert Grimit, 1200 American Charter Center, Lincoln, Nebraska, 68508 and Jill Schroeder, 2115 State Capitol, Lincoln, NE. 68509-4906, by first class mail, postage prepaid, on this 11 day of June, 1987.

/s/ Roy E. Schwasinger
Roy E. Schwasinger

IN THE DISTRICT COURT OF
DOUGLAS COUNTY, NEBRASKA

FIRST NATIONAL BANK OF OMAHA, A Nebraska Banking Corporation, Plaintiff,	) DOC. 831	NO. 565
vs.	) ANSWER	
GARY R. HAGEBUSH and ROY E. SCHWASINGER, Defendants.	) (Filed October 11, 1983)	

COME NOW the Defendants, Gary R. Hagebush and Roy E. Schwasinger, and each of them, and for their Answer to Plaintiff's Petition filed herein admit, deny, and allege as follows:

These Defendants, and each of them, deny each and every allegation contained in Plaintiff's First Cause of Action and Second Cause of Action set forth in its Petition filed herein, except those allegations which constitute admission against Plaintiff's interests.

WHEREFORE, Defendants having fully answered Plaintiff's Petition filed herein, prays that said Petition be dismissed with prejudice, at Plaintiff's cost, and further prays for such other relief which the Court deems just and equitable in the premises.

GARY R. HAGEBUSH and
ROY E. SCHWASINGER, Defendants

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